

PHELAN, JAMES

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Reject Shaw Plea for Writer Testimon

...on Here

Sept. 20, 1967

Dear Dr. Popkin:

Enclosed is a Xerox of what Garrison's supporters call the "apparent, alleged, reported, reputed" Sciambra memorandum of his initial interview with Perry Russo. The memo, alas, is real and refuses to vanish even though those who want to believe in Garrison avoid looking at it.

You will note, in reading it, that there is no mention whatever of (1) the infamous party in Ferrie's apartment where the assassination of Kennedy, according to Russo's later account, was discussed; (2) Shaw's knowing or associating with either Lee Harvey Oswald or "Leon" Oswald; (3) Russo's knowing Shaw as either Clay Bertrand or Clem Bertrand, or (4) any information implicating Shaw in the crime for which he now stands accused.

To dispose of the memo, Garrison and Sciambra have resorted to fearsome contortions. They have formulated and abandoned a variety of explanations, like a man attempting to find a bowler that fits an inordinately lumpy head. At the outset, Garrison had no explanation at all, but bucked the puzzle over to Sciambra. Sciambra's first ploy was bitterly to deny that the memo omitted what it indeed omitted. He quickly dropped this contention when I offered to resign from the staff of the Post if I had described the memo inaccurately, provided Sciambra would resign from the D.A.'s staff if I had described it correctly.

Garrison et al subsequently have tried to cope with the memo by portraying Sciambra as the most incredibly inept investigator who ever mucked up an elementary assignment. They would have us believe that Sciambra located a witness to a conspiracy to commit the crime of the century, that Sciambra took notes on a three-hour interview during which Russo spelled out a sensationally detailed story, that he then returned to New Orleans, flushed with his coup, and wrote a 3,500-word memo in which he managed to leave out all the relevant testimony, and that he then burned his original notes.

In Ramparts, William Turner tries to stuff the mishapen head into an entirely different bowler. He describes the memo as having been "thrust" into my hands when "half-completed." Unfortunately, Turner didn't bother to examine the memo either. ~~Turner had to have read the memo.~~ I submit that it is not possible to read the memo and then describe it as Turner did. (Paraphrasing, I must confess that I ~~submitted~~ *submitted why* Turner is now an ex-FBI agent.)

Let us move on from the bewildering and contradictory accounts of the conception of the memorandum and simply look at it with a minimum of common sense. However it got written, it poses

some mind-boggling problems. Here are just two:

1. On page 6, Sciambra declares that "He (Russo) said that he saw this man (Shaw) twice." Sciambra then specifies the two times. One was at the Nashville wharf; the other in a car with Ferrie. Sciambra thus not only omits the infamous party, he also adds up the number of encounters to a total consistent with his omission of the vital and incriminating meeting. One can almost see him at his typewriter, peering at his notes, ticking off the meetings on his fingers, and coming up with two instead of three.

How does this grab you, as an authority on skepticism from Erasmus to Descartes? Which alternative would you accept: That Russo described three meetings, that Sciambra forgot about the only one relevant to a crime, and then fortuitously miscounted to three and stopped short at two; or that Russo indeed told Sciambra of only two meetings and conjured up the third one after Sciambra wrote the memo?

2. Russo unfortunately told his story at least four times before Sciambra interviewed him in Baton Rouge. He was interviewed by at least two tv reporters, a radio journalist, and Bill Bankston of the Baton Rouge daily newspaper. To each of them he told the same basically innocuous story--as it affects Shaw--that is in the Sciambra memo. Like Sciambra's fifth account, the previous four are utterly bare of the sensational details that Russo described so vividly at the Shaw trial.

To me, all this adds up to a mystery as strange as that which you attempt to solve in "The Second Oswald." Yet you wrote in the New York Review of Books: "His story and his explanations of it all seemed to me consistent and plausible."

I think this can be so only if, along with two Oswalds, there were also two Russos. I find it impossible to reconcile yours with mine. Of course, when you assessed yours as "consistent and plausible," you had not examined the apparent-alleged-reported-reputed Sciambra memorandum. Now that you have it at hand, I am curious as to the impact it has upon your appraisal. It has had considerable impact upon Garrison. His latest desperate "solution," outlined to me in New York 45 hours before the NBC show, was that your "consistent and plausible" Perry Russo is in fact a co-conspirator with Shaw, Ferrie, and Oswald. If you have an alternative explanation a little nearer the earth, I would certainly like to hear it.

I have two specific comments on your Review article. I would be deeply appreciative if you would correct, for your readers, your erroneous statement that "So far, Phelan has refused to repeat his allegations before the New Orleans Grand Jury, although he has officially invited to do so." At no time did I refuse to go before the Grand Jury; at no time did I receive any such invitation. In fact, I defied the advice of five attorneys and returned to Garrison's jurisdiction with the full expectation of being subpoenaed before the jury. Immediately upon arrival in New Orleans, I notified two of

Garrison's close friends that I was in town. Russo also confided to me that he had informed Garrison's office of my presence in New Orleans and the name of my hotel. Later, I sought out Garrison in Monticello, N.Y., and talked to him for two hours and he said nothing about my testifying before the grand jury. When you imply that I am a gutless fellow who hits and hides you raise the unbearable prospect that, along with two Oswalds and two Russos, there are also two Phelans. According to his wife, the original suffers from a gross deficiency of elementary prudence, rather than in excess of it.

Secondly, the New Orleans grand Jury does not need me to explore the Strange Case of the Forgetful D.A.'s Investigator. All I did was point out that there was a peculiar memo by Sciambra that reported Russo's testimony to be wildly disparate from what he swore to at Shaw's hearing. The problem posed by the memo, as you now can determine from reading it, is not one of a false allegation by a hit-and-run journalist. The problem is the memo itself, with its unresolved implications of perjury on the part of Russo. The memo does not need me to speak for it; it speaks for itself. I find it strange indeed that the grand jury, meeting a few feet down the hall from Garrison's office, has not issued a subpoena duces tecum for Sciambra and the memo, required him to tell whatever his current tale may be, and then bounce his story off Russo himself--under oath. I find it stranger that Garrison has not heard and lodged perjury charges against Russo (if he determined that Sciambra's memo was accurate) or fired Sciambra (if the memo is as riddled with error as Russo's testimony implies.) If Sciambra can muck up Russo's story so outrageously, shouldn't a responsible D.A. be apprehensive about what Sciambra might do to other aspects of the case?

Finally, I find it strangest of all that Dr. Popkin raised none of these obvious questions in the New York Review of Books.

Yours very truly,

J.R. Phelan

143 Tivoli Drive
Long Beach, Calif.

July 5, 1967

Dear Jim:

I've reread your foreword to "Crime, Law and Corrections." I wonder if you remember this passage:

"That spring evening in New York City when Kitty Genovese was so leisurely murdered, 38 witnesses heard her screams and watched the killer toy with her for half an hour. Not one of the 38 interfered or called the police. A few were afraid. Most did not want to get involved. One was tired and went to bed. The victim died alone, bleeding at the foot of a wooden stairway. These 38 grey mice, peeping from the comfort of their holes, may have been watching the destiny of their own race."

There are many Kitty Genoveses, and more than one way to close one's window on their screams.

If Perry Russo's story is wrong, you've made a Genovese out of Clay Shaw. I spent well over an hour relating to you, at the Laurels, what I knew to be wrong with Russo's story.

Perhaps when you suggested that I confront him in your presence, you thought I would back away. If you thought that, you were totally wrong. As I wrote to you two weeks ago, I'm ready when you are. I conclude from your continued silence that you aren't ready, and I'm beginning to wonder whether you ever will be.

All I have to say is that if you want to play the 39th mouse, you ought to stop demeaning the other 38.

143 Tivoli Drive
Long Beach, Calif.

Jim Pelan

Insert A

The Post writer believes that we have not developed much evidence. Compared to whom?

The judges concluded that there was enough evidence to hold the defendant for trial. The grand jury concluded that there was enough evidence to indict the defendant. But perhaps Mr. Phelan believes that the three judges and the twelve grand jurors were hypnotized, too.

Insert B

I believe that Mr. Phelan is a man who writes things pretty much as he sees them. How he sees them, however, depends greatly on his background knowledge of the subject matter. Where he has none, as was the case here, he must rely greatly on pre-determined convictions.

Consequently, the inaccurate image created by his article is largely the result of omissions rather than stated errors. If Mr. Magoo were to proceed to Times Square and write a painstakingly careful description of the evening rush hour, it might be a very honest effort. The Saturday Evening Post might even publish it if the results were spectacular enough. However, something would be missing.

Here, for example, are a few of the things missing from Mr. Phelan's thesis that there has been a brutal and swashbuckling rush to judgment by the New Orleans District Attorney's Office.

He has omitted the fact that it was unprecedented for the prosecution to require its own witness to take tests to confirm his veracity. He has omitted the fact that the defendant was offered the privilege of taking such tests and was told that if they confirmed that he was not involved in the assassination he would not be arrested. The defendant refused, a fact which I have not revealed before because I did not realize that I was going to be required to prove my innocence.

Mr. Phelan omitted the fact that it was unprecedented for the prosecutor voluntarily to set up a preliminary hearing -- a proceeding designed primarily to protect the rights of the defendant -- in which the State would be required to prove in court that a basis existed for charging the defendant. Ordinarily, it is presumed by the law that such a basis exists and the District Attorney does not have to prove anything until the time of trial arrives.

Mr. Phelan omitted the fact that, even after the judges ruled that the evidence showed there was a basis for charging the defendant, the prosecutor voluntarily relinquished his right to institute such charges simply by signing a formal complaint. Instead, the prosecutor submitted the matter to the judgment of the twelve citizens of the grand jury, who voted to indict the defendant after hearing evidence.

Mr. Phelan omitted the fact that in the seven weeks since the defendant has been charged the prosecution has refused to make any statement regarding the case which might reflect upon the defendant's chances to obtain a fair trial.

And finally, in his haste to create a picture of a District Attorney's office which rushes to judgment, Mr. Phelan has omitted to say that my staff is now in its fifth year of office and not a single defendant has yet to walk out of the courtroom with an acquittal on a murder case. Does this sound like a prosecutor's office which rushes to judgment without evidence and without just cause?

The fact is that our record for not rushing to judgment is unscarred. On the other hand, the Saturday Evening Post has had spectacular problems in this regard, as is attested to by judgments against it for many hundreds of thousands of dollars -- the result of earlier uninformed enthusiasms resulting in a questionable portrayal of facts.

Purely for the sake of argument, because it is hardly our view, let us assume that our case is not as strong as we would choose to have it. The fact remains that we have witnesses who have informed us under oath that arrangements were made here to kill the President. All of these witnesses did not testify at the open hearing.

Should I, nevertheless, leave well enough alone and disregard the apparent probability that the men who planned the terrible murder are among us today? Should I hand the case over to others who, no matter how well intentioned, have shown disinterest in further inquiry? Should I conform to the discreet etiquette of honorable men and turn my back on justice so that calm will prevail and the people will not be restless? Should I say that the death of John Kennedy is not my affair?

(For disclosure:) If I were going to make public statement, would never expose... or deceased...
If I were going to make public statement, would never expose... or deceased...
Not would I knowingly expose even a part of my case to journalist or that, for private profit, he could publicly prejudge it.
Therefore it should be obvious from the anyone... that. This is an invasion...

M E M O R A N D U M

June 26, 1967

TO: JIM GARRISON, District Attorney

FROM: TOM BETHELL

RE: INTERVIEW WITH MATT HERRON, PHOTOGRAPHER PRO SATURDAY EVENING POST ARTICLE BY JIM PHELAN

MATT HERRON, photographer for the Black Star agency in New York, currently residing at 315 Pine Street, New Orleans, Louisiana, worked with JIM PHELAN on the Saturday Evening Post article about the New Orleans assassination investigation. I have known HERRON since October 1966, when we met in connection with our common interest in the subject of the assassination. He is also a close friend of VINCENT SALANDRIA.

HERRON's belief is that President Kennedy was killed as a result of a conspiracy and for this reason hopes to see the New Orleans investigation succeed. Further, he volunteered the following information on June 25, 1967, regarding JIM PHELAN and PERRY RUSSO.

PHELAN apparently interviewed RUSSO in ^{Baton Rouge} New Orleans after the preliminary hearing. Also present at this meeting was RUSSO's roommate and MATT HERRON. Twice during this interview PHELAN asked RUSSO if it was true that he, RUSSO, had not mentioned a meeting between SHAW, FERRIE, and OSWALD until he came to New Orleans shortly before the preliminary hearing. According to HERRON, RUSSO agreed that he did not mention such a meeting until his arrival in New Orleans in words which were to the effect: "I guess I didn't." This interview was not tape recorded, according to MATT HERRON.

There is no mention of this interview in the Saturday Evening Post article, although it would tend to corroborate PHELAN's story.

HERRON stated that PHELAN is still "working on the case," and that he, PHELAN, would submit affidavits at the trial testifying to the above mentioned meeting. I asked HERRON why PHELAN was still working on the case in view of the fact that his article had been published and he said that PHELAN "is interested in detective stories."

HERRON also stated that it was his impression from talking to PHELAN that BILL GURVICH was now collaborating with PHELAN.

HERRON said that if called upon to testify to this meeting, he will do so as he was there; however, he repeated that although he is not prepared to "put anything in writing" at this

stage, he was passing this information on to me because he wants the assassination probe to be successful in its outcome.

Soon after the publication of the Saturday Evening Post article, and before HERRON had had time to read it, PERRY RUSSO called HERRON and asked to be put in touch with PHELAN. HERRON's impression of RUSSO was that of an amiable person who wanted to please everyone. He did not elaborate on what RUSSO's purpose was in wanting to speak to PHELAN.

HERRON has also been in touch with JACK MARTIN and has attained MARTIN's confidence because he used some information MARTIN gave him without attributing it, as he had promised, and to the extent that he kept his word MARTIN regards HERRON as unique among newsmen.

T. BETHELL
June 26, 1967

